



Legislative Bulletin.....April 27, 2005

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H.R. 748 — Child Interstate Abortion Notification Act

Summary of the Bill Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: \$0

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 1

Total New Private Sector Mandates: 1

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 748 — Child Interstate Abortion Notification Act (Ros-Lehtinen)

Order of Business: The bill will be considered on Wednesday, April 27, 2005, under a structured rule with two amendments and one motion to recommit with or without instructions.

Note: The bill is a modified version of the Child Custody Protection Act, which passed the House (H.R. 3682) on July 15, 1998, 276-150 (<http://clerk.house.gov/evs/1998/roll280.xml>), on June 30, 1999, (H.R. 1218) by a vote of 270-159 (<http://clerk.house.gov/evs/1999/roll261.xml>), and in the 107th Congress (H.R. 476) on April 17, 2002, by a vote of 260-161 (<http://clerk.house.gov/evs/2002/roll097.xml>).

In both the 106th and 107th Congresses, Rep. Sheila Jackson-Lee offered a motion to recommit the bill with instructions. Her motion would have allowed “an adult sibling, a grandparent, or a minister, rabbi, pastor, priest, or other religious leader of the minor” to transport a minor pregnant mom for an abortion without parental consent or notification. The motion to recommit was rejected in 1999, by 164-268 (roll call #260) and in 2002, by a vote of 173-246 (<http://clerk.house.gov/evs/2002/roll096.xml>).

Summary: H.R. 748 makes it a criminal offense to knowingly transport a minor across a state line to obtain an abortion in circumvention of her state's parental consent or parental notification law. H.R. 748 states:

“whoever knowingly transports a minor across a State line, with the intent that such minor obtain an abortion, and thereby in fact abridges the right of a parent under a law requiring parental involvement in a minor's abortion decision, in force in the State where the minor resides, shall be fined under this title [up to \$100,000] or imprisoned not more than one year, or both.”

The bill allows the exceptions “if the abortion was necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself.” The bill also notes that the pregnant minor herself and her parent(s) are exempted from the provisions of this act.

The bill also makes it a requirement in federal law for an abortionist who performs or induces an abortion on a minor who lives out of state to “provide at least 24 hours actual notice to a parent of the minor before performing the abortion. If actual notice to such parent is not possible after a reasonable effort has been made, 24 hours constructive notice must be given to a parent.” Four exceptions to this requirement are allowed if:

- (1) the state where the abortion takes place already has a law in force that requires parental involvement and that law is followed;
- (2) the abortionist has documentation that the minor's home state court has waived the home state parental involvement law;
- (3) the minor “declares in a signed written statement that she is the victim of sexual abuse, neglect, or physical abuse by a parent, and, before an abortion is performed on the minor, the physician notifies the authorities specified to receive reports of child abuse or neglect by the law of the State in which the minor resides of the known or suspected abuse or neglect;” and
- (4) “the abortion is necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself.”

The bill establishes that a parent who suffers harm from violation of these provisions may obtain “appropriate relief in a civil action.”

Currently, 44 states have enacted some form of a parental involvement statute, though only 34 are in effect. Twenty-three of these state statutes require parental notification or consent for abortion (subject to judicial bypass procedures).

23 States with parental consent or notification laws in force: Alabama, Arizona, Arkansas, Georgia, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming. (For a complete state-by-state list of parental consent/notification laws go to: <http://www.nrlc.org/Federal/CCPA/ParentalLawsFS.doc>)

AMENDMENTS

Scott Amendment: The amendment allows “taxicab drivers, bus drivers, nurses, medical providers or others in the business of professional transport” to bring pregnant minors across state lines for abortions, without the penalties provided in H.R. 748. The Judiciary

Committee notes that none of these entities are currently entitled to make medical decision for minor women, that these people are not in a position to know the minor's accurate and complete medical history or act in her best interest, and that the underlying bill is a parental rights bill and these people are not the child's parent. Pro-life groups have also noted that abortion facilities could set up shuttle services to transport minors across state lines and be exempted under the Scott "professional transport" exemption.

In addition, under the strict provisions in H.R. 748, the Judiciary Committee notes that taxicab drivers will not normally have the requisite criminal intent necessary for prosecution under the bill, which allows for the conviction of an individual who knowingly transports a minor across a State line "with the intent that such individual obtain an abortion." Although a taxicab driver may have the knowledge that the minor that he is transporting will obtain an abortion as soon as she arrives at her destination, his intent is not that the minor obtain an abortion but rather that he receive a fare. On the other hand, if the taxicab driver had raped the girl and wanted to erase any evidence of his impregnating her, this amendment, if adopted, would allow such misconduct simply because of his occupation.

Jackson-Lee/Nadler Amendment: The amendment allows "a grandparent of the minor or clergy person" to bring pregnant minors across state lines for abortions. The amendment does not define "clergy person." Under the bill, "parent" includes legal guardian or person who has care and control of the minor, with whom the minor regularly resides, and who is recognized by the state as being able to make abortion decisions with regard to parental involvement laws. In other words, if the pregnant minor resides with a grandparent, and he or she is qualified to make medical decisions on behalf of that child, then the grandparent is already covered under H.R. 748. If that is not the situation, pro-life groups note that even a relative should not be able to subvert the authority and parental rights of the minor's parents. The Committee notes that grandparents and undefined clergy do not currently have the authority to authorize a medical procedure for a minor child – or even ear piercings or the dispensing of aspirin at schools – so why should they have that right for an abortion procedure?

Cost to Taxpayers: CBO estimates that implementing H.R. 748 would not result in "any significant cost to the federal government." CBO expects that any increase in federal costs for law enforcement, court proceedings, or prison operations would not be significant because of the small number of cases likely to be involved. Because those prosecuted and convicted under H.R. 748 could be subject to criminal fines, the federal government might collect additional fines if the bill is enacted. Such fines, which CBO estimates would be negligible, would be deposited in the Crime Victims Fund.

Does the Bill Create New Federal Programs or Rules?: Yes, the bill creates a new federal crime for transporting a minor across state lines to subvert her state's parental involvement laws relating to abortion.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes, CBO reports that H.R. 748 contains both an intergovernmental and a private-sector mandate as defined in the Unfunded Mandates Reform Act by requiring abortionists, in certain cases, to provide parental notification before performing an abortion on a pregnant minor from out of state.

Constitutional Authority: The Judiciary Committee, in Report #109-51, finds Constitutional Authority under Article I, Section 8, Clause 3 of the Constitution (power to regulate interstate Commerce).

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